

REMARKS

Applicants have carefully reviewed the Office Action mailed on November 14, 2007. Applicants respectfully traverse (and do not concede) all objections, rejections, adverse statements, and adverse assertions made by the Examiner. With this amendment, claims 21 and 26 are amended. No new matter is added. Claims 21-35 remain pending.

Claims Rejection under 35 USC § 103

Claims 21, 22 and 24-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engelson et al. (U.S. Patent No. 5,972,019) in view of Ginsburg et al. (U.S. Patent No. 5,011,488). Regarding claims 21, 22, 24, and 25, claim 21 is amended to recite that the cage assembly includes a first deployment shape wherein both the proximal cage and the distal cage are in a deployment configuration and a second expanded shape wherein both the proximal cage and the distal cage are in an expanded configuration. Furthermore, claim 21 recites that when the actuator element is in the first position, the cage assembly is in the first deployment shape and when the actuator element is in the second position, the cage assembly is in the second expanded shape. In combination, these limitations indicate that a single element (e.g., the actuator element) shifts the cage assembly between the first deployment shape and the second deployment shape and, thus, shifts both the proximal cage and the distal cage between the deployment configuration and the expanded configuration.

MPEP §2143 recites that exemplary rationales that may support a conclusion of obviousness include:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) “Obvious to try” – choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design

incentives or other market forces if the variations are predictable to one of ordinary skill in the art;

(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Although the Examiner has not indicated which rationale has been relied on, it appears as though the Examiner has relied on the rationale in MPEP §2143-A in support of this rejection. To reject a claim based on this rationale, Office personnel must resolve the Graham factual inquiries. Then, Office personnel must articulate the following:

- (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference;
- (2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately;
- (3) a finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and
- (4) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

See: MPEP §2143. If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art. *Id.*

As indicated by the Examiner, Engelson et al. does not include each element of the claimed invention. For example, Engelson et al. does not teach or suggest the claimed cage assembly.

Ginsburg et al. appears to teach a balloon 70 and an expandable tip 30 that the Examiner equated with the claimed cage assembly. While we disagree with the Examiner interpretation of the art, the Examiner's interpretation appears moot given that neither reference teaches or suggests an element (e.g., an actuator element) that shifts the cage assembly between the first deployment shape and the second deployment shape and, thus, shifts both the proximal cage and the distal cage between the deployment configuration and the expanded configuration. For example, Engelson et al. does not

teach or suggest a proximal cage and a distal cage and, thus, cannot teach or suggest the claimed actuator element. Additionally, Ginsburg et al. utilizes one structure (e.g., scaling box 50) to inflate/deflate balloon 70 and another (e.g., tube 12) to expand/collapse tip 30. Thus, Ginsburg et al. fails to teach or suggest the claimed actuator element that shifts both a proximal cage and a distal cage between the deployment configuration and the expanded configuration.

Based on these distinctions, Applicants respectfully submit that the cited art fails to include each element of amended claim 21. For example, neither reference teaches or suggests the claimed actuator element. Consequently, claim 21 as well as claims 22, 24, and 25 depending therefrom, are patentable over the cited art.

Regarding claims 26-31, claim 26 is amended in a manner analogous to claim 21. Therefore, for reasons similar to those set forth above in relation to claim 21, Applicants respectfully submit that amended claim 26 as well as claims 27-31 depending therefrom, are patentable over the cited art.

Claims 21-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmaltz et al. (U.S. Patent No. 5,449,372) in view of Ginsburg et al. (U.S. Patent No. 5,011,488) further in view of Crittenden et al. (U.S. Patent No. 4,719,924). Regarding claims 21-25, claim 21 is amended as described above. Once again, although we disagree with the Examiner interpretation of the art, the interpretation appears moot given that neither reference teaches or suggests a single element (e.g., an actuator element) that shifts the cage assembly between the first deployment shape and the second deployment shape and, thus, shifts both the proximal cage and the distal cage between the deployment configuration and the expanded configuration. For example, the Examiner indicated that Schmaltz et al. does not teach or suggest the claimed cage assembly. Consequently, Schmaltz et al. cannot teach or suggest the claimed actuator element. Likewise, Ginsburg et al. fails to teach or suggest the claimed actuator element as indicated above. Crittenden et al. fails to overcome the deficiencies of the cited art. Therefore, Applicants respectfully submit that claim 21 as well as claims 22-25 depending therefrom are patentable over the cited art.

Regarding claims 26-31, claim 26 is amended as described above. For reasons similar to those set forth above in relation to claim 21, Applicants respectfully submit that

amended claim 26 as well as claims 27-31 depending therefrom, are patentable over the cited art.

Claims 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engelson et al. (U.S. Patent No. 5,972,019) in view of Ginsburg et al. (U.S. Patent No. 5,011,488) further in view of Lefebvre et al. (U.S. Patent No. 5,421,832). As indicated above, Applicants respectfully submit that claims 21 and 26 are patentable over Engelson et al. and Ginsburg et al. Lefebvre et al. fails to overcome the deficiencies of the cited art. Consequently, Applicants respectfully submit that claims 21 and 26 are patentable over the combination of Engelson et al., Ginsburg et al., and Lefebvre et al., to the extent that such a combination is even possible. Because claims 32-33 depend from claim 21 and because claims 34-35 depend from claim 26, these claims are also patentable for the same reasons as claims 21 and 26 and because they add significant elements to distinguish them further from the art.

Conclusion

Reexamination and reconsideration are respectfully requested. It is submitted that all pending claims are currently in condition for allowance. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at 612.677.9050.

Respectfully submitted,

GENE SAMSON ET AL.

By their Attorney,

Date: 05/14/09

Glenn M. Seager, Reg. No. 36,926
CROMPTON, SEAGER & TUFT, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, Minnesota 55403-2420
Tel: (612) 677-9050